

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**ALFRED BIRDINE,**

**Defendant.**

**CASE NO. 8:08CR73**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”), the government’s objections (Filing No. 26) and the Defendant’s objections (Filing No. 29). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The government objects to the drug quantity in light of the role reduction given in the PSR. The objection will be heard at sentencing.

The Defendant objects to ¶ 28 (drug quantity), ¶ 56 (information regarding prior drug use), and ¶ 85 (statement of Defendant's grounds for variance). The objection to ¶ 28 (drug quantity) will be heard at sentencing together with the government's objection. The government has the burden of proof by a preponderance of the evidence. The objection to ¶ 56 is denied as it does not affect the guideline calculation. The objection to ¶ 85 is denied, and the Court notes that the Defendant has not filed a motion for variance as required on or before July 17, 2008, in ¶ 6 of the Order on Sentencing Schedule.

IT IS ORDERED:

1. The government's Objections to the Presentence Investigation Report (Filing No. 26) will be heard at sentencing;
2. The Defendant's objection to ¶ 28 (drug quantity) of the PSR (Filing No. 29) will be heard at sentencing, and otherwise the Defendant's objections (Filing No. 29) are denied;
3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12<sup>th</sup> day of August, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge